

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARLOS SPENCER / ISHWAN MASON,

Petitioner,

- against -

UNITED STATES OF AMERICA,

Respondent.

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NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED: 07/28/2014

ORDER

09 Civ. 5191 (NRB)

06 Cr. 80 (NRB)

WHEREAS petitioner Carlos Spencer on June 3, 2009 filed a habeas petition pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence; and

WHEREAS on March 30, 2011 we denied petitioner's habeas petition; and

WHEREAS on July 26, 2012 petitioner filed a Rule 60(b)(6) motion seeking relief from our judgment on his habeas petition or, in the alternative, a writ of audita querela; and

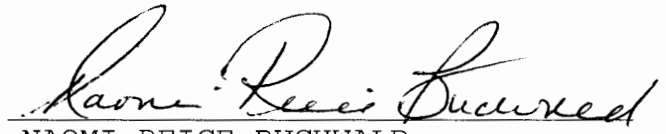
WHEREAS, by Memorandum and Order of May 30, 2013, we construed the July 26 motion as a second or successive habeas petition and gave notice to petitioner that he had 30 days to either withdraw his motion or have it certified to the Second Circuit as a second or successive habeas petition; and

WHEREAS on September 18, 2013 petitioner responded to this Court's May 30 Memorandum and Order with the pending submission, which reargues his July 26 motion and refuses to make the election required by our prior order; it is hereby

ORDERED that in accordance with our May 30 Memorandum and Order, Mr. Spencer shall be given a final opportunity to inform the Court within 30 days as to whether he wishes to withdraw his habeas petition; and it is further

ORDERED that if Mr. Spencer fails to notify the Court within 30 days that he wishes to withdraw his petition, we will treat it as second or successive habeas petition and certify it to the Second Circuit.

Dated: New York, New York
July 24, 2014


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

A copy of the foregoing Order has been mailed on this date to the following:

Julian J. Moore, Esq.
John T. Zach, Esq.
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, NY 10007

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